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ARIZONA

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MINING LAW

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MINING LAW

OF THE

TERRITORY OF ARIZONA.

Arizona (Terr) Laws, statutes, etc.

PRESCOTT:
OFFICE OF THE ARIZONA MINER.
1864.

OF THE REGISTRY AND GOVERNMENT OF MINES AND MINERAL DEPOSITS.

Be it enacted by the Legislative Assembly of the Territory of Arizona.

SECTION 1. All mining rights on the public lands of the United States as well as rights acquired by discovery on the lands of private individuals, are possessory in their character only, and such possessory rights shall be limited, regulated, and governed as hereinafter provided.

TITLE ONE.

GENERAL PROVISIONS RELATING TO THE REGISTRY OF MINES, MINING RIGHTS, AND CONVEYANCES OF THE SAME.

§ 2. The Judges of the Probate Courts in their respective Counties shall have jurisdiction over the registry and denouncement of all mines and all mineral and auxiliary lands, and the disputes and questions of whatsoever nature between all adverse claimants to mines or mineral, and auxiliary lands, which he shall hear, and determine in a summary manner according to the rules of practice as prescribed for the District Court in civil cases, and all proceedings and records therein shall be entitled "In the Probate Court.—Judicature of Mines."

§ 3. The Clerks of the Probate Courts shall be ex-officio Recorders of mines and all mineral and auxiliary lands in their respective Counties.

§ 4. The County Commissioners of each County shall at the expense of the County provide a suitable office for the Clerk of the Probate Court, at the seat of justice of his County, which shall be called the Recorder's Office, in which

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he shall keep the books and papers of his office; they shall also provide rooms and cases for the preservation of mineralogical specimens from each mine recorded, to be properly numbered, marked and registered by him, with the time when and the locality whence taken, and he shall also preserve in said rooms all rocks, fossils, earths, minerals, plants and other matters that may be useful or interesting for scientific, legal or practical purposes.

§ 5. He shall provide three books of record, the expense of which shall be allowed by the County Commissioners, and paid out of the funds originating from the tax on mines, which he shall respectively mark as "Books of Mining Record," "A," "B," and "C," which shall be kept in his office, and open to the inspection of the public at all times.

§ 6. The Recorder of mines shall collect and record in Record Book A, all registrys, denouncements, and claims of mines, whether on public lands or private grants, by individuals or companies, that were made prior to the passage of this chapter, and make complete indices of the same, and keep them for the inspection of the public.

§ 7. He shall record all first or preliminary registrys and denouncements of mines, made after the passage of this chapter, in Record Book B, and all second registrys after the sinking of the shaft and complying with the law as hereinafter provided, in Record Book C, which shall be alike kept for public inspection.

§ 8. The Recorder of mines shall keep a seal of office, to be provided by the County Commissioners of each County, and affix the same to all official documents.

§ 9. He shall be allowed and receive from the parties interested the following fees, and when the number of words contained in the papers to be recorded shall exceed one folio he shall receive in addition twenty cents per folio: For each record of former claim in Book A, $1. For each preliminary or first registry of a mine or auxiliary mining land, in Book B, $1. For each succeeding claim on the same deposit, $1. For final record after sinking shaft, and certificate, in Book C, $2. For final record of each additional claim of the same party on the same deposit, in Book C, $1. For recording each separate auxiliary tract, $1. For record-

ing articles of co-partnership, $2.50. For recording charters of mining companies, $2. For recording notice required by section 25–I, $1. For recording each conveyance, $1. For any subsequent copy of the foregoing, one-half of the above rates; and for all fees in litigated mining cases he shall receive the same compensation as is allowed to Clerks of the District Courts in civil cases for like services, and for all services and fees not provided for in this chapter his fees shall be fixed by the Judge of Probate.

§ 10. The charters of all mining companies and their officers, where they keep their office, and where their mines are situated, with a description of their machinery, and a list of their property, shall be furnished by them, and recorded in Record Book C of the Recorder, and they may procure certificates thereof, that shall at all times be good evidence in all courts of justice.

§ 11. The co-partnership agreements of all mining partners shall be recorded in the same manner and certificates thereof shall have the like effect, and the company or co-partnership failing to furnish the charter or agreement required to be recorded by this chapter, after due notice by the Recorder, shall be deemed to stand in contempt of the law, and punished by the Probate Judge by fine in his discretion not to exceed one hundred dollars.

§ 12. All mining claims shall be registered in the real names of the parties, and by persons legally authorized to make such registry either in person or by power of attorney, to be exhibited to and filed and recorded with the Recorder of mines, or with the Recorder of the mining district as hereinafter provided, and no claims shall be registered in the names of fictitious persons, and any person violating the provisions of this section shall forfeit all right and interest in the claim so registered, and the same shall be subject to registry and denouncement by another, on the same terms as newly discovered veins.

§ 13. The property of all mines and mineral lands in descents and conveyances of property to heirs shall be considered and regarded as real estate.

§ 14. All sales of mining claims or mineral lands, or any interest in the same, shall be registered with the Recorder,

by deed to be executed as provided for conveyances of real estate, and in a book to be kept by him for that purpose, within three months from the date of the sale of the same, or shall be declared forfeited and subject to denouncement and registry by another; and such conveyances when so registered shall be subject to the same rules which govern conveyances of real estate, and shall have the same effect in the courts.

TITLE TWO.

EXTENT OF MINING RIGHTS, AND MODE OF ACQUIRING AND RETAINING TITLES THERETO.

§ 15. Every mining claim or pertenencia is declared to consist of a superficial area of two hundred yards square, to be measured so as to include the principal vein or mineral deposits, always having reference to and following the dip of the vein so far as it can or may be worked, with all the earth and mineral therein. But any mining district organized in accordance with the provisions of this chapter, may prescribe the dimensions of said mining claim or pertenencia for such district, provided that in no case the dimensions so prescribed shall exceed the number of yards allowed by this section, and further provided, that no such mining district shall diminish the extent of the Territorial claim to one pertenencia as defined in this section.

§ 16. Any person discovering or opening a vein or other mineral deposit in this Territory, not actually worked or legally owned by other parties, or registered in accordance with this chapter, shall by properly denouncing and registering the same be entitled to claim and hold a possessory right to a tract of land to the extent of two mining claims or pertenencias including the said vein or mineral deposit, and conforming as nearly as possible to the general direction thereof, each to be measured two hundred yards long by two hundred yards wide, the direction of the lines to be determined by the person claiming.

§ 17. If two or more persons are associated, and have formed a company for the exploration and working of mines, and one or several shall make discoveries of mineral deposits in consequence thereof, said company so engaged in exploration

shall be entitled to denounce and register one discovery claim only upon each lode.

§ 18. It shall be lawful for the claimants of a mine or mineral lands to locate and take possession of public lands for a mill site and other necessary works connected therewith, which shall not exceed one quarter section, containing a stream or other water suitable for the purpose. They shall have a right to place a dam or other obstructions on such stream, and to divert its waters for the above uses and purposes. They shall within the time and in the manner prescribed in this chapter for the registration and denouncement of mines, proceed to denounce and register the same with the Clerk of the Probate Court, and they shall be known as auxiliary lands. And if within three years from the day their notice of claim is so recorded, they shall expend in fitting the same for a mill, or in placing a mill or reduction works thereon, the sum of one hundred dollars, they may cause the record of such work to be made, and proceedings for confirming their title to be instituted as provided in section 29 of this chapter, with like effect, and receive a certificate of title as therein provided, conforming as nearly as they can to the requirements of that section. Instead of the work required by section 32 of this chapter they shall use the machinery or other works erected upon said land for mining purposes at least thirty days in each year. Such claims shall be subject to all the provisions of this chapter which are applicable to mining rights, and may be abandoned and re-located. All rights to auxiliary lands acquired under the laws of any mining district before this act takes effect shall be valid, and the owners of the same, upon complying with the provisions of this section may take the like proceedings to confirm their titles with a like effect.

§ 19. It shall be the duty of all claimants of mining claims, mineral lands and auxiliary tracts, to at once define the extent and boundary of them as nearly as possible, by good substantial monuments or other conspicuous marks, in the presence of the Recorder of the mining district, or of some witness who shall prove to the satisfaction of the Recorder that the same has been done, and to post up a public notice of their claim, at the opening of the principal vein, and to have them properly registered and recorded within three months from the time of first claiming them at the office of the mining district

Recorder according to the provisions of this chapter. Such record shall give a faithful description of the veins, mineral deposits, and tracts of lands, the character and bearing of the veins or deposits and their connection with natural monuments or conspicuous objects in the vicinity.

§ 20. No person shall change his original monuments or boundaries of mineral or other lands, but if a subsequent investigation makes this convenient or necessary, and it can be done without prejudice to other parties, then such change shall take place by the sanction of the Judge of the Probate Court, provided they are properly recorded and the new boundaries and monuments fixed at once when the original ones are removed.

§ 21. All minerals, woods, waters, earths and vegetation found within the boundaries of any tract of land registered and claimed for mining shall be exclusively used by him or them who are legally entitled to the possession of the land wherein or whereon they are situated so long as they are used for mining purposes only, provided that no one shall have the right to prevent transient persons from using the waters along the public highways, where they were provided by nature in natural tanks, springs, streams, or otherwise, nor from making such equitable disposition of the waters as the Legislature shall prescribe.

§ 22. No person shall have the right to impede or inconvenience travelling by fencing up the public roads, filling them up with rubbish or undermining them so as to endanger their safety, neither shall any one change their established direction without sanction of the proper authorities.

§ 23. Whenever two or more persons or parties explore and prospect one and the same vein, and at or about the same time but at different places, and without knowledge of each other, then he or they who shall prove first occupancy shall have the right of first location, taking the principal point of excavation as the centre of their claim or claims on each side along the general direction of such vein or deposit. The other parties shall proceed by the same laws after the others have fixed their boundaries. Should there be left vacant ground between the different parties then it shall be at the option of the first discoverers so to change their boundaries as shall best suit them, and have them recorded accordingly.

Any other parties shall locate in the order of the time of their arrival on the vein or mineral deposit.

§ 24. Whenever two or more parties shall select the same mine or mineral deposit for exploration, and the parties first on the ground, knowing the other parties to be at work, shall fail to give warning, either verbally or in writing, of their priority claim on such vein or deposit, then that portion of the mine situated between the main excavations of the two parties shall be equally divided between them, irrespective of the number of members each company may have; *Provided*, That the intervening portions shall not exceed the quantity of land allowed by the provisions of this chapter.

§ 25. The laws and proceedings of all mining districts established in this Territory for the denouncement, registration, and regulation of mines, mining claims, mineral lands and auxiliary lands, prior to the day this act takes effect, are hereby legalized and declared to be as valid and binding in all courts of law, as if enacted by this Legislative Assembly, to the extent and under the conditions and restrictions herein contained.

I. All rights, claims and titles to any veins, mineral lands, or mineral deposits, and auxiliary lands, acquired before this act takes effect, under, by virtue of, and in conformity to the laws of said mining districts, are hereby declared to be valid and legal, and shall be respected and enforced in all courts of this Territory, when sustained by the evidence herein provided; but no amount of work done thereon shall be construed to give a perpetual title thereto, but shall give such title only and such rights and privileges as is provided in section 29 of this chapter; and no person who was at the time of the location of his claim an inhabitant of this Territory shall forfeit his claim because he was not a resident also of the mining district in which his said claim was located. And no such right, claim or title shall be considered as abandoned provided the claimants shall within six months from the day this act takes effect file with the Clerk of the Probate Court of the County in which his claim is situated a brief description of the same, giving the name of the district in which the lode is situated, and of the lode or lodes, and the extent of his claim thereon, with a declaration that he intends to retain and work the same

according to law, unless such claim has been forfeited, and subject to re-location under the laws of such mining district before this act takes effect.

II. All records and all papers required by the laws of said mining districts to be deposited with the Recorders of said districts for record shall be received as evidence of their contents in all courts of this Territory, and shall not be rejected for any defects in their form, when their contents may be understood, but shall be valid to the extent provided by said mining laws, except as hereinbefore restricted; *Provided*, That such records and papers are deposited with or recorded by the Clerk of the Probate Court of the County in which said mining district is located, and within three months from the time this act takes effect; and if said records or papers are lost or mutilated, or if such Recorder of a mining district shall neglect or refuse to deposit the same as aforesaid, an affidavit of their contents made by any person interested therein, or certified or sworn copies thereof may be so recorded, and shall have the like effect.

III. All conveyances of mines, mining rights, mineral and auxiliary lands made prior to the time this act takes effect, shall be valid and binding to pass the title of the grantor thereof, although defective in form and execution, if their contents can be understood, and as such shall be received and regarded in all courts of this Territory; *Provided*, That such conveyances shall be deposited with or recorded by the Clerk of the Probate Court of the County where said mines are situated, within three months from the time this act takes effect, and if lost or mutilated, copies or affidavits of their contents, executed as aforesaid, may be recorded as provided above.

§ 26. Every Recorder, Register, Clerk, or other recording officer, of every such mining district, or who has at any time acted as such recording officer, within three months after this act takes effect, shall deposit with the Clerk of the Probate Court of the County in which said district or greater part thereof is situated, all records which he has so kept, and all papers deposited in his hands for record, and papers so made or deposited with his predecessors in said office, which are in his hands as aforesaid, or he shall so deposit certified copies of the same. And such records and other papers shall be securely

kept by such Clerk open in office hours to public inspection, and copies of the same duly certified by him shall be received in all courts of justice, and have the same effect as the originals. And any such Recorder, Register, or other recording officer of each mining district who shall neglect or refuse to comply with the provisions of this section shall be liable in damages to the party injured thereby, and shall be liable to be punished by the Judge of Probate of the County in which said mining district, or the greater part thereof, is situated, for contempt, by fine not exceeding five thousand dollars and imprisoned not more than one year, and shall be incapable of holding any such office and mining claim.

§ 27. Mining districts now existing may be continued or new mining districts may be established in the manner and for the purposes hereinafter provided.

I. The Recorder of every mining district now existing shall at the same time that he deposits the records of said districts, with the Clerk of the Probate Court, as the last preceding section requires, take an oath before the Judge of said Court that he will faithfully perform the duties of his office until another Recorder shall be elected and qualified in his place, which oath shall be recorded by the Clerk of the Probate Court. He shall record in a book to be kept by him for that purpose all notices of claims or rights to veins, mineral deposits, mineral lands, and auxiliary lands, which may be left with him to be recorded, and shall note on all papers which may be received by him to be recorded, the time when they were so received by him, and they shall be considered as recorded from that time. He shall when requested by any such claimant go with him to his claim and see that the same is measured by metes and bounds, and marked by substantial monuments on the surface of the earth, and shall make a record of the same, and of the time when it was done and certify it to be correct, or shall make a record and certificate of the same on the evidence of a credible witness, who was present when the same was done, and is cognizant of the facts, and whose name shall be entered on the record. He shall, when requested by any such claimant, go with him to his claim, and examine any shaft that may be sunk by

him, or tunnels that may be opened to the same, and make measurements of the same, and a record and certificate as aforesaid; and he shall in like manner examine, measure or estimate, and make and record a certificate of any work which is required by law to be done by a claimant. And the said recording officer shall quarterly file with the Clerk of the Probate Court of the County in which said district is located a copy by him certified of all records made by him for the three months last preceding, which shall be duly recorded by said Clerk, and a copy of said record duly certified by him shall be evidence of its contents in all courts of this Territory. And such recording officer shall be liable to all the penalties provided in the preceding section, if he shall neglect or refuse to perform any of the acts and duties required of him by this section, but shall not be required to perform any such service until his fees for the same, to be fixed by the mining districts, are paid him, if he requests it. And if any paper deposited with him for record is required to be recorded by the Clerk of the Probate Court, he shall at the time said paper is so deposited with him, take and receive the fee fixed by law for recording such paper by said Clerk, and pay the said Clerk said fee when he deposits said paper with him to be recorded as aforesaid. All such mining districts may make laws not inconsistent with the laws of the Territory, may elect officers for the government of such districts, and fix their compensation, but all such acts and proceedings shall be recorded, and all records and papers thereof filed with the Clerk of the Probate Court as aforesaid.

II. Any number of persons not less than twelve, owning mining claims in any mining district, or in any contiguous mining districts, or who have discovered and may wish to denounce a mine or mineral lands, not within the limits of any established mining district, may proceed to make a new mining district at a meeting of persons holding claims in such district so to be established, and of claimants in any districts to be divided or to be included therein. They shall cause a notice in writing, and specifying the limits of said contemplated district, signed by them, to be posted in three conspicuous places in said district, and if any part of an established district is to be included therein by leaving a copy

of said notice with the Recorder of said district at least ten days before the day of said meeting. At said meeting all persons holding claims as aforesaid may vote and may determine by a majority vote of those present whether said new district shall be established and its limits, but within the boundaries named in the notice for said meeting, and thereupon the persons holding claims in such newly established district shall proceed to select a name, and make laws therefor, and elect a Recorder, who shall be qualified as aforesaid, who shall perform all the duties and be subject to all the liabilities provided in this chapter for such officers, and shall file with the Clerk of the Probate Court as aforesaid a record of the proceedings of this and all subsequent meetings at the time and in the manner herein provided.

§ 28. It shall be the duty of all claimants of mineral tracts to sink at least one shaft of thirty feet in depth or to run a tunnel of fifty feet in length, in the body of the vein or in the adjoining rock, so as to test the vein from the surface, for the purpose of ascertaining the character and capacity of such mineral deposit, within the space of one year from the day of first taking possession thereof, and they shall notify the Recorder of the mining district that said shaft or other work is completed, and that they intend working the vein or mineral deposit. And the Recorder shall examine said work in person, and make and record a certificate of the result of such examination, which shall contain a statement of the condition and quality of the vein or mineral deposit, the amount of labor performed, and a general view of the results obtained. Said report shall be accompanied by three specimens taken from different parts of the work, which said specimens, with a copy of the record so made by him shall be filed by him within the time required by this act in the office of the Clerk of the Probate Court. And said Clerk shall make a record of the same. Such specimens shall be numbered and described by him, and be preserved for the use of the mineralogical professorship of the University of Arizona.

§ 29. The Judge of the Probate Court at any time within thirty days after the record made by the Clerk of said Court as provided in the preceding section, upon complaint in writ-

ing made to him by such claimants, describing fully their claims, stating the labor performed by them, and the certificate thereof, and that the registration of the same has been made as required by law, and requesting that their title thereto may be confirmed, shall cause a summons, under the seal of his court, to be issued, requiring all persons interested to appear at a day named therein and which shall not be less than sixty days from the day the same was issued, and show cause why the title of such complainants and claimants should not be confirmed, a copy of which complaint and summons, duly attested by the Clerk of the Probate Court, shall be published twice in the Territorial newspaper, and be kept posted in the office of said Clerk from the day of issuing the same to the return day thereof; and if no person shall appear on such return day to contest the right of the claimants to such claims the Judge of Probate shall examine all the records filed in the office of his Clerk relating to such claims, and if he finds that the said claimants have in all respects complied with the provisions of this chapter, he shall make a decree in substance that the complainants having complied with the laws of this Territory relating to the denouncement and registration of mines have acquired a perfect title to their claims (describing the same,) until the 1st day of January, A. D. 1868, and forever after unless abandoned by them. And the said Clerk shall give the said claimant a copy of such decree, under the seal of the court, which shall be conclusive evidence of title in any proceedings relating to such claims, until they are abandoned. And unless the persons adversely interested, and contesting the title of the complainants, shall appear on the day named in said complaint and proceed as hereinafter provided, they shall be forever barred from contesting the title of said complainants to such claims. And if the contestants shall so appear they shall on that day or some day to be fixed by said Judge proceed to file an answer, setting forth their claim and case, and the proceedings shall then be conducted in conformity to the provisions of this chapter and the code of civil practice. And whenever a final decree is made thereon, determining the title to said claim or mine, by said Judge, or by any other court on appeal, the said Judge shall cause a record to be

made in the office of his Clerk of such decree, and a certified copy thereof may be made as aforesaid, with the like effect. And any claimants of mineral lands who before this act takes effect have in any way, or under any law, acquired a title to such mineral lands, after filing with the Clerk of the Court their evidence of title and description of claim as required by this chapter, may cause an examination of the shaft sunk by them or other work done by them, to be made as aforesaid, and take the like proceedings for the confirmation of their titles, with the same effect; *Provided*, This section shall not apply except when the complainants are in possession of such mine or mining rights, claiming title thereto.

§ 30. By reason of the Indian wars and unsettled condition of the country, the time within which a shaft is required to be sunk, or other labor performed on a claim, shall not commence until two years from the day this act takes effect, and all the provisions of this chapter relating thereto are suspended for that time, but any claimant may sink a shaft or do such other labor, and at any time after the record of their claims with the Probate Court, and thereupon institute proceedings to confirm their titles, and be entitled to all the rights and privileges provided for in this chapter.

§ 31. No single person or company shall be compelled to sink shafts or make other improvements on more than one of the tracts of land claimed by him or them for the same vein or mineral deposit, and any number of claimants on the same vein or mineral deposit, who may unite for said purpose, shall be allowed to concentrate labor, capital, and energy, to any one single point, which to him or them shall be best suited to ascertain to the best advantage the general character, quality and capacity of that particular vein or mineral deposit, and may take the like proceedings to confirm their titles.

§ 32. After the work required by section 28 of this chapter has been performed, and the record thereof made as therein provided, two years shall be allowed the claimants of mineral lands to develope the same, and procure machinery and provide for working the same, and during that time the same shall not be considered abandoned although no work be done thereon; *Provided*, That in such event they shall annually, and before the first day of June in each year, file with the

Clerk of the Probate Court an affidavit signed by them that they have not abandoned such claims but intend in good faith to work them; and said term of two years shall not commence until the first day of January, A. D. 1868. And after the expiration of said term of two years, it shall be obligatory upon claimants to such mineral lands to hold actual possession of them, and work the vein, which obligation shall be considered as complied with by doing at least thirty days work thereon in each year; but if such claimants are prevented from working such vein by the hostility of Indians or other good cause, rendering said working difficult or dangerous, they may by authority of the Judge of Probate first obtained be relieved from performing labor thereon from time to time, but for not more than one year at any one time, during the continuance of such cause.

§ 33. Any person who may discover a mineral vein or deposit as aforesaid, which is not included within a mining district, or which may be in a mining district in which there is no legally authorized Recorder, may acquire title thereto, and to auxiliary lands, by giving notice as aforesaid, and recording the same with the Clerk of the Probate Court of the County in which the same is situated, and may take the same proceedings with the like effect with the Clerk of the Probate Court that are required to be taken with the Recorder of a mining district.

§ 34. Discoverers of mines on lands in the legal ownership or possession of others, and not public lands, before doing the work of sinking the shaft required by section 28 of this chapter shall pay to such parties such compensation for the use of the same as may be awarded by the Judge of Probate, upon complaint of either party, or shall give bond to such parties for payment of the same, and sureties to be approved by said Judge, and whenever it becomes necessary or advantageous to construct tunnels for the purpose of drainage, ventillation, or the better hauling of ores or other subterraneous products or mining materials, it shall be lawful for any party or parties to construct such tunnel or drift through all private and public property; *Provided*, That all damages arising from such subterranean works to the other parties, to be determined as provided above, shall be paid by the par-

ties for whose benefit such tunnelling is done, to be paid before said work is commenced, or security given to the satisfaction of the Judge of Probate for payment of the same; but no damages shall be paid on public lands when claims for such lands shall be set up after such tunnel shall have been projected or actually in process of construction; *Provided,* That the lapse of time between projection and actual work shall not exceed ninety days, and that the tunnelling parties give timely notice of their project to any new claimant of the so affected ground.

§ 35. Whenever such tunnel as mentioned in the preceding section shall intersect or traverse mineral deposits, or run along lodes claimed and held by other parties, then it shall be at the option of the owners of such other mineral deposits either to pay one-half of the expense of excavation for the distance that such tunnel runs through their mineral deposits, and secure the whole of the ores excavated, or to divide the ores with the tunnelling parties, the latter paying all expenses of excavation, or it shall be optional with either party to abandon all claim to the ores excavated.

§ 36. If in the construction of such subterranean works new veins or deposits are encountered in ground not claimed or owned by other parties, they shall become the property of the party for whom such tunnel is constructed, and shall be denounced and registered as is required of new mines, and shall be governed by the same laws as are prescribed in this chapter.

TITLE THREE.

OF THE ABANDONMENT AND RE-LOCATION OF MINES AND MINING RIGHTS.

§ 37. Any claimant or claimants not complying with any of the foregoing conditions and obligations shall forfeit all right to any such recorded or unrecorded claims to mineral and auxiliary tracts, and it shall not be lawful for him or them to register such claims anew within a period of three years after such forfeiture. All such tracts shall be free for working and registry to any but those excepted in this section.

§ 38. All veins and mineral deposits situated on public lands, which have not been worked and occupied from the time of the acquisition of the Territory by the United States up to the time of the passage of this chapter, except as herein provided, shall be considered as abandoned and subject to registry and denouncement.

§ 39. All veins and mineral deposits that have been or may be abandoned hereafter, shall in all cases and respects be governed by the laws regulating the opening and working of new veins and deposits, as prescribed in this chapter.

§ 40. Whenever any mine, vein or mineral deposit shall have been abandoned or forfeited in accordance with the provisions of this chapter, and registered anew by other parties, it shall be obligatory upon such parties to give the former owners warning thereof, so as to remove from the tract within the space of three months, anything he or they may claim valuable or useful. Such warning shall be given in the nearest newspaper, published in the Territory, and by posting it at three of the most conspicuous places in the County where the mine is situated. Three months after the expiration of such warning any and all buildings, furnaces, arrastras, metals, and every other species of property which may still remain on the ground of such mine, vein or mineral deposit, shall become the undisputed property of the new claimant, without compensation of any kind to any person whatever.

§ 41. Any person taking possession of or entering upon a mining claim or auxiliary lands, registered according to the provisions of this chapter, and before it is abandoned shall be ousted therefrom in a summary manner by the order of the Probate Judge, and the malfeasor shall be adjudged to pay all damages and costs consequent thereon.

TITLE FOUR.

OF PROCEEDINGS IN LITIGATED MINING CASES.

§ 42. All the proceedings in all the causes relating to mines in the courts of this Territory shall be considered equitable proceedings, and be conducted according to the rules of practice prescribed in equity cases, and the Judge shall hear

and determine all questions on their merits and according to the equitable rights of the parties.

§ 43. In all litigated cases relative to mines the Probate Judge shall take the testimony or cause the testimony to be taken down in writing by the Clerk, or by a Commissioner appointed by him for that purpose, and certified and filed by him as a part of the record in the case, and whenever a witness is beyond the limits of the Territory his testimony may be taken in like manner as in cases pending in the District Court.

§ 44. An appeal shall be allowed in all mining cases from the judgment or deceee of the Probate Court to the District Court, if taken within ten days after said judgment or decree the appellant first giving bond with two sufficient securities to the adverse party in a sum sufficient to cover all costs and damages, in the discretion of the Court, conditioned that he will prosecute the appeal without delay, and with effect, and pay all damages resulting from the same; and if the appeal is taken after the day of trial and final judgment then notice thereof shall be given in writing to the adverse party, and on or before the first day of the term of the District Court next thereafter, a transcript of all the papers and proceedings, and the testimony, and approved report of the Commissioners taken in the case, shall be certified by the Clerk and filed in the District Court, at the expense of the appellant, and the cause so appealed shall be tried at the next term thereafter, if taken five days before the commencement of said term, and if not taken within that time, then it shall be tried at the next succeeding term.

§ 45. All cases taken by appeal to the district Court shall be tried on their merits, on the record and testimony as certified to the District Court, and no new testimony shall be introduced unless it is shown in the affidavit of the party applying, to the satisfaction of the Court, that new, important or material testimony has been discovered since the trial before the Probate Court, or could not be procured in season to be used at said trial, and which may change the judgment in the cause, and in that event said new testimony shall be taken in writing by the Judge or Clerk of said District Court, or by a Commissioner, and become part of the record in the case.

§ 46. Writs of error may be taken out, and appeals allowed to the Supreme Court, in all mining cases brought by appeal or certiorari into the District Court, on the same terms as are provided for by writs of error and appeals from the District Courts to the Supreme Court.

§ 47. The District Courts shall exercise a superintending control over the Probate Courts in all mining cases by writs of mandamus, prohibition and injunction, and writs of certiorari shall issue in all cases to correct and revise their proceedings, in case of neglect or refusal to allow an appeal in accordance with the rules of practice prescribed for the government of the District Courts.

§ 48. The Probate Judge in all litigated mining cases, when local knowledge is neceesary, may at his own option, or at the request of either party, appoint a Commission of three persons skilled in mining, to proceed to any mine or mineral land in question and examine the question in litigation, and make a report in writing under oath of all the facts and circumstances bearing upon the question and relevant thereto, and their report shall be rejected or approved in whole or in part by the Probate Judge, and if said report shall be approved it shall be certified, filed and made a part of the record in the cause. The said Commissioners shall receive five dollars per day each for their services while necessarily engaged in performing the duties of said commission, to be taxed as costs in the cause.

§ 49. All disputed lines, divisions and demarcations between parties claiming mineral veins, deposits, or auxiliary lands, shall be determined by the Judge of the Probate Court in a summary manner, according to the provisions of this chapter, and when he may judge it necessary, or is requested by either of the parties litigant, he shall appoint a commission as is provided in the forty-eighth section of this chapter, to examine and report upon said division lines or boundaries, and the same proceedings shall be had thereon as is provided for in said section.

§ 50. Whenever the members of a co-partnership or company, or tenants in common of mineral lands, cannot agree as to the working or management of the veins or mineral deposits therein, one or more of them may make complaint to

the Judge of Probate of the County in which said lands are situated, setting forth the facts, who shall thereupon issue a summons to the other members of said co-partnership or company, or tenants in common interested therein, or cause such other notice to be given to them as he may think proper, requiring them to make answer thereto, and if upon a hearing on such complaint the Judge is of opinion that the claim or claims of such persons are susceptible of partition, and it can be equitably made between them, and the parties cannot agree among themselves on making such partition, he shall appoint a commission as provided in section 48 of this chapter, who shall go upon the claims of such partnership, company or tenants in common, if necessary, and segregate their claims, having in view the equities of the case and the customs and regulations of miners, and shall make report in writing to the Judge of Probate, who shall make his decree in accordance with said report, and which shall be conclusive between the parties unless an appeal be taken as provided in this chapter. Or whenever one or more of such partners or tenants in common in mineral lands, and owning not less than one-third of the full interest of such partnership on tenancy therein, shall desire to work their mine, and the other partners or tenants after reasonable notice, shall neglect or refuse to unite in such working they may make complaint to the Judge of Probate as aforesaid, and he shall proceed thereon as before provided in this section, and if upon a hearing of such complaint it appears to him that the complainants are able to work said mine, and that there is no good reason why the same should not be worked, he shall make a decree to that effect, and if the other partners do not appear he may appoint an agent and receiver, who shall protect their rights, and see that the mine is properly worked, and shall receive their proportion of the profits, but such partners or tenants in common so authorized to work as aforesaid, shall conduct said work at their own expense, and shall not be authorized to bind such other persons to the payment of any indebtedness which they may incur in that behalf.

TITLE FIVE.

OF THE TERRITORIAL CLAIM, AND OF ALLUVIAL AND DILUVIAL DEPOSITS.

§ 51. It shall be the duty of persons who may discover and claim mining rights or mineral lands, at the same time that they may define the boundary of their claim or claims to any lode or mine as required by the provisions of this chapter to lay off and define the boundaries of one pertenencia as required by the provisions of this chapter, adjoining their claim or claims, which shall be the property of the Territory of Arizona. And at the same time that they present their notice of claim or claims to be recorded by the Recorder of the mining district they shall also present to such Recorder the claim of said Territory. And if said discoverers and claimants shall neglect or refuse to present to such Recorder the claim of said Territory as aforesaid they shall forever forfeit all claim to the mine or ledge so discovered by them. Any recording officer recording the claim or claims of such discoverers and claimants, when the claim of said Territory is not filed therewith as aforesaid, shall be subject to all the penalties provided in section 26 of this chapter. Such claim shall be recorded as provided in this chapter for like claims, but no work shall be required to be done thereon, nor shall it be considered to be abandoned so long as it is the property of the Territory. And if sold, the time within which the purchaser shall be required to work said claim shall commence from the day of sale, except when the time is suspended as before provided. Every Clerk of the Probate Court as soon as he records the said claim shall send a copy of his record to the Treasurer of the Territory, and no fees shall be charged by any recording officer in any matter relating to said claim. And the Territorial Treasurer may at any time after six months from the day he receives such record as aforesaid, and at such time and place as in his opinion will be most for the interest of the Territory, cause such claim to be sold at auction to the highest bidder, but every such sale shall be at least twice advertised in the Territorial newspaper, and be held at his office, or the office of the Clerk of the Probate Court, or Recorder of the mining district of the County where

the claim is situated. And the Treasurer is authorized to make a deed of the same to the purchaser in the name of the Territory. And the amount received by him shall be added by him to any fund now or hereafter provided for the protection of the people of the Territory of Arizona against hostile Indians, and be expended as provided by law. And after all expenses as are incurred by the Territorial authorities for the purpose of destroying or bringing into subjection all hostile Indian tribes in this Territory are liquidated, then all remaining or accruing funds, out of all or any sales of Territorial mining claims, shall be applied as a sinking fund for school purposes.

§ 52. The extraction of gold from alluvial and diluvial deposits, generally termed placer mining, shall not be considered mining proper, and shall not entitle persons occupied in it to the provisions of this chapter, nor shall any previous section of this chapter be so construed as to refer to the extraction of gold from the above mentioned deposits.

§ 53. This chapter shall be in force and take effect from and after the 1st day of January, A. D. 1865.

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